

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ENFORCEMENT AND REMOVAL OPERATIONS
ICE HEALTH SERVICE CORPS**

GENDER DYSPHORIA AND TRANSGENDER DETAINEES

**IHSC Directive: 03-25
ERO Directive Number: 11759.3
Federal Enterprise Architecture Number: 306-112-002b
Effective Date: 15 Mar 2017**

**By Order of the Acting Assistant Director
CAPT Luzviminda Peredo-Berger, MD**

- 1. PURPOSE:** The purpose of this directive is to set forth ICE Health Service Corps (IHSC) policies and procedures for the provision of medical care for transgender detainees and the management and treatment of gender dysphoria (GD) among detainees in U.S. Immigration and Customs Enforcement (ICE) custody.
- 2. APPLICABILITY:** This directive applies to all IHSC personnel, including but not limited to Public Health Service (PHS) officers, civil service employees, and contract personnel. It is applicable to IHSC personnel supporting health care operations in ICE-owned or -contracted detention facilities and to IHSC Headquarters (HQ) staff. This directive applies to contract personnel when supporting IHSC in detention facilities and at HQ.
- 3. AUTHORITIES AND REFERENCES:**
 - 3-1.** Title 8, Code of Federal Regulations, Section 235.3 ([8 CFR § 235.3](#)), Inadmissible Aliens and Expedited Removal.
 - 3-2.** Section 232 of the Immigration and Nationality Act, as amended, Title 8, U.S. Code, Section 1222 ([8 U.S.C. § 1222](#)), Detention of Aliens for Physical and Mental Examination.
 - 3-3.** Title 8, Code of Federal Regulations, Part 232 ([8 CFR § 232](#)), Detention of Aliens for Physical and Mental Examination.
 - 3-4.** Section 322 of the Public Health Service Act, as amended, Title 42, U.S. Code, Section 249(a) ([42 U.S.C. § 249\(a\)](#)), Medical Care and Treatment of Quarantined and Detained Persons.

- 3-5. Title 42, U.S. Code, Public Health Service Act, Section 252 ([42 U.S.C. § 252](#)), Medical Examination of Aliens.
 - 3-6. The Privacy Act of 1974 Title 5 U.S. Code Section 552(a) (5 U.S.C. § 552(a)) (b)(7)(E) as applied in the Department of Homeland Security (DHS) Privacy Policy Memorandum: 2007-1, *DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Information on Non-U.S. Persons* (January 7, 2009).
 - 3-7. ICE ERO Memorandum, [Further Guidance Regarding the Care of Transgender Detainees](#) (*Transgender Care Memorandum*) (June 19, 2015).
 - 3-8. [IHSC Clinical Guidelines for the Treatment of Gender Dysphoria](#) (October 2016).
4. **POLICY:** A medical provider (MP) must complete a physical examination, and a behavioral health provider (BHP) must complete a mental health evaluation, for all transgender detainees within two business days of intake to determine if treatment for GD is clinically indicated and for a general mental health assessment.

Transgender detainees are defined as detainees who:

Self-identify as being transgender to ERO staff, indication of which may be found on the Record of Deportable/Inadmissible Alien (Form I-213);

Self-identify as being transgender to medical staff; and/or

Have health or transfer records that indicate a diagnosis of GD, formerly referred to as Gender Identity Disorder (GID).

- 4-1. **Evaluation:** Transgender detainees must be evaluated by a medical provider and behavioral health provider to determine if treatment for GD is clinically indicated and for a general mental health assessment.
- 4-2. **Treatment:** MPs provide health care and medication for detainees with GD using the IHSC Clinical Guidelines for the Treatment of GD to direct therapy. MPs also advise the medical department representatives on the Transgender Classification and Care Committee (TCCC), if applicable, regarding suitable housing assignments for transgender detainees (see Section 4-4). An MP must provide medical care to transgender detainees to meet the needs of their sex assigned at birth, as well as appropriate care to address relevant opposite sex needs. Medical care includes preventive health screening(s) at annual physical examinations, as applicable.

Clinical pharmacists (CPs) may provide chronic GD medical care services after the initial health assessment (see Section 5-3).

General guidance for the care of all chronic conditions, such as GD, can be found in IHSC Directive: 03-03, *Care of Chronic Conditions*.

BHPs provide ongoing care as needed to support the detainee.

- a. **Hormone Therapy:** A MP must initiate and/or continue hormone therapy for GD detainees as clinically indicated and in accordance with the IHSC Clinical Guidelines for the Treatment of GD.
 - b. **Therapy and Medication Review:** A MP must review the detainee's current treatment regimen and complete a thorough health assessment to determine whether any changes in hormone dosing or preparation are needed. A MP must address transgender detainees' special needs, including those for undergarments that are consistent with the detainee's gender identity. To the extent practicable and appropriate, health services administrators (HSAs) should coordinate with custody staff to honor the special needs of transgender detainees in the same manner as any other medical special need.
 - c. **Informed Consent:** A MP must explain the risks and benefits of taking hormone therapy (i.e. the opposite sex hormones) for the treatment of GD to detainees. The detainee and counseling MP must review and sign the eClinicalWorks (eCW) informed consent document that pertains to the appropriate gender transition. A MP must document the counseling and education provided to the detainee in the detainee's health record prior to the initiation or continuation of therapy while in ICE custody.
- 4-3. Same-Sex Chaperones:** Health care personnel must coordinate access to same-sex chaperones for transgender detainees. The same-sex chaperone must belong to the sex with which the detainee identifies and must be present during all examinations of genitalia, breasts, and perineum/rectal area. The MP must document the presence of the chaperone in the detainee's health record.
- 4-4. Housing:** In facilities that have adopted the *Transgender Care Memorandum ICE Detention Facility Contract Modification for Transgender Care* transgender detainees may be placed in protective custody for the period of time specified in the adopted contract, to allow for the TCCC to meet and recommend housing placement as part of an individualized detention plan. The HSA must designate an appropriate medical staff member (minimum of a registered nurse (RN)) and a behavioral health staff member (minimum of a licensed clinical social worker (LCSW)) to serve as the medical department representatives on the TCCC. TCCCs generally meet on an ad hoc basis to provide recommendations on various matters, including housing assignments based on an individual's assessments and the facility housing resources.

TCCC meetings may be held in person or via teleconference. Prior to a TCCC meeting, the medical department representatives must meet with the transgender detainee(s) to gather relevant information, including detainee preferences and requests on housing, searches, and other matters. For further information on the TCCC, see the ICE *Transgender Care Memorandum*. For facilities without a TCCC, medical and custody staff should coordinate on housing placement whenever practicable.

5. PROCEDURES:

- 5-1. **Identification:** Health staff must schedule a physical exam and a MP must complete the physical exam for all transgender detainees within two business days of intake. The MP must document the examination in the detainee's health record, including pertinent past medical and surgical treatment.
- 5-2. **Mental Health Assessment:** Health staff must refer transgender detainees to a BHP for an assessment of general mental health and to apply Diagnostic Statistical Manual (DSM) criteria to assess a possible diagnosis of GD. This mental health assessment must occur within two business days of intake or condition identification (i.e., when medical staff is informed of a detainee who identifies as transgender while in ICE custody), whichever is later.
- 5-3. **Medical Provider-Guided Treatment:** A MP must screen, counsel, and order laboratory-guided hormone treatment(s) for detainees who have met diagnostic criteria for GD and for whom the MP deems it appropriate to proceed with treatment in accordance with IHSC Clinical Guidelines. The MP must issue undergarments that are consistent with the detainee's stated gender identity.

- 6. **HISTORICAL NOTES:** This directive replaces IHSC Directive: 03-25, *Gender Dysphoria and Transgender Detainees*, dated 24 Mar 2016. The following references were added: ICE ERO Memorandum, [*Further Guidance Regarding the Care of Transgender Detainees*](#) (*Transgender Care Memorandum*) (June 19, 2015), and IHSC Clinical Guidelines. Reference to the role of the medical provider participating in the TCCC has been added to Section 4-2. Definitions adequately covered elsewhere were removed from Section 7. Section 9, Protection of Medical Records and Sensitive Personally Identifiable Information (PII), was removed.

7. DEFINITIONS:

Transgender – Transgender people are those whose gender identity or expression is different from their assigned sex at birth. (PBNDs 2011)

8. APPLICABLE STANDARDS:

- 8-1. **Performance-Based National Detention Standards (PBNDs):**

PBND 2011:

4.3: Medical Care.

4.4: Medical Care (Women).

2.1: Admission and Release.

8-2. American Correctional Association (ACA):

Performance-Based Standards for Adult Local Detention Facilities, 4th edition:

4-ALDF-4C-40: Special Needs Inmates.

Standards for Adult Correctional Institutions, 4th edition:

4-4399: Special Needs Inmates.

Performance-Based Standards for Correctional Health Care in Adult Correctional Institutions.

8-3. National Commission on Correctional Health Care (NCCHC):

Standards for Health Services in Jails, 2014:

J-G-02: Patients with Special Health Needs.

9. PRIVACY AND RECORDKEEPING. IHSC maintains detainee health records in accordance with the Privacy Act and as provided in the Alien Health Records System of Records Notice, 80 Fed. Reg. 239 (Jan. 5, 2015). The records in the electronic health record (eHR)/eCW are destroyed ten (10) years from the date the detainee leaves ICE custody. Retention periods for records of minors may differ.

10. NO PRIVATE RIGHT STATEMENT. This directive is an internal policy statement of IHSC. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.